

## **Policy – Staff Approval/Denial of Renewal Applications**

**Policy Number: 2013-02**

Approved by Commission: January 15, 2013

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### **I. Purpose**

- a. The purpose of this policy is to provide instructions for the Executive Director, on behalf of the Commission, to review, impose standard restrictions/conditions, and approve/deny license renewal applications filed by licensees who disclose certain civil or criminal offenses, who fail to respond to requests for information from the Commission (including requests for audit), or who have been disciplined by the Commission or another licensing entity.
- b. The Commission desires to protect the public interest by ensuring a timely response to applications (see K.S.A. 77-511(a)), promote fairness and uniformity in decision-making, and respond to the need for economic efficiency.

### **II. Authority**

- a. The Commission shall receive applications for, and issue licenses to, brokers and salespersons, as provided in the Real Estate Brokers' and Salespersons' License Act and shall administer provisions of this Act and the Brokerage Relationships in Real Estate Transactions Act. The Commission may do all things necessary and convenient for carrying into effect the provisions of the acts and may adopt rules and regulations not inconsistent with the acts. K.S.A. 74-4202(b).
- b. The Commission shall employ an Executive Director, who shall keep a record of all proceedings, hearings, meetings, communications and official acts of the Commission, and perform such other duties as the Commission may require. K.S.A. 74-4203(a).
- c. See K.S.A. 58-3041, 58-3043, 58-3050, and 58-3062
- d. Kansas Administrative Procedure Act. K.S.A. 77-501, *et seq.*

### **III. Policy and Procedures**

- a. The Executive Director shall be authorized to approve, or to approve with conditions and/or restrictions consistent with previous Commission decisions in substantially similar cases, the following applications for renewal that disclose:
  - i. Disciplinary action against any professional or occupational license held by the licensee:
    1. If the discipline involved a suspension related to unresolved tax matters that have since been resolved. If the matter is still unresolved, the Executive Director shall approve and condition the license to require the licensee provide quarterly status reports to the Commission.
    2. If the discipline did not involve tax matters and the discipline did not result in a denial, revocation, suspension, probation, or voluntary surrender of the license.
  - ii. Pending, non-person misdemeanor charges not involving violence or threats of violence to another person or forgery, embezzlement, theft,

- obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any similar offense, if the licensee is restricted to their supervising broker with standard conditions pending the outcome of the charges and completion of any resulting court-mandated requirements, and the licensee is required to provide quarterly status reports to the Commission if the court-mandated requirements are not timely completed.
- iii. Misdemeanor charges for domestic violence if there have been no other criminal or stalking orders during the previous five year period, and the resulting conviction was for disorderly conduct and the sentence has been served, probation/parole has been satisfactorily completed and restitution, if any, has been paid.
  - iv. Misdemeanor traffic offenses, such as no proof of insurance, expired tags, driving while suspended, driving without a license or any similar offense if the sentence has been served, probation/ parole/ diversion has been satisfactorily completed and restitution, if any, has been paid.
  - v. First time or second time alcohol or drug misdemeanor offenses if the sentence has been served, probation/parole/diversion has been satisfactorily completed and restitution, if any, has been paid. If the application discloses one or two alcohol or drug misdemeanor offenses within the prior renewal period, and any additional alcohol or drug offenses have been previously considered by the Commission and are at least seven years old, the Executive Director may approve the application with standard conditions, condition the license to require semi-annual reporting of the licensee's involvement in a substance-abuse rehabilitation program, and restrict the licensee to their supervising broker, all for a minimum period of two years after completion of any court-mandated requirements. Misdemeanor or felony charges resulting in a diversion or a suspended imposition of sentence that has not yet been completed, if the license is issued with standard restrictions/conditions pending satisfactory completion of the diversion or suspended imposition of sentence.
  - vi. Previous discipline by the Commission, where the licensee has successfully complied with all orders imposed by the Commission as of the date the application is reviewed, and has not engaged in any license law or BRRETA violation for which the Commission could take new or additional action.
  - vii. Any combination of cases listed above, if the licensee does not have more than two felony offenses and/or more than five misdemeanor offenses on his/her record.
- b. The Executive Director shall be authorized to approve with the following conditions, renewal applications that disclose a misdemeanor conviction, diversion agreement, or suspended imposition of sentence, not involving forgery, embezzlement, theft, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any similar offense, within the prior two year period:

- i. Licensee must submit quarterly reports to the Commission if licensee does not timely complete all court-mandated requirements; and
  - ii. Licensee must provide proof of satisfactory completion of any probation, diversion, suspended imposition of sentence, or restitution payment.
- c. The Executive Director shall be authorized to approve and refer to Enforcement renewal applications that would otherwise be approved by this document, that fail to disclose convictions, provide partial disclosure and/or incorrect information, or disclose offenses which are not shown on the KBI/FBI reports.
- d. The Executive Director shall be authorized to approve renewal applications that disclose criminal conduct or license discipline which predates the licensure renewal period, and has previously been considered by the Commission (or their designee) and approved for licensure.
- e. The Executive Director shall be authorized to approve renewal applications for licensees involved in disciplinary cases pending before the Commission, unless the licensee has engaged in any conduct for which the Commission could take new or additional action or Enforcement has referred the matter to the Commission for review.
- f. The Executive Director shall be authorized to approve renewal applications that disclose the licensee has conducted activity requiring licensure during any unlicensed or inactive period.
- g. The Executive Director shall not be authorized to approve or deny license applications that disclose a felony conviction, unless:
  - i. The Executive Director may approve the application under section III, paragraph d of this document.
  - ii. The conviction was for a non-person felony not barred by K.S.A. 58-3043(e), which was not disclosed to the Commission and is more than ten years old, in which case the Executive Director shall approve the renewal application pursuant to section III, paragraph c of this document.
- h. The Executive Director shall be authorized to deny the following renewal applications:
  - i. Applications from licensees that have failed to respond to at least three consecutive written requests for information from the Commission staff.
  - ii. Applications that disclose any revocation of a prior real estate license or other professional or occupational license.
  - iii. Applications from suspended licensees that have been continuously suspended for more than six months for failure to comply with a Commission order, request for information, or audit.
  - iv. Applications from licensees who have lied or falsely represented facts to the Commission during a hearing.
  - v. Applications that do not meet the continuing education requirement, unless the licensee properly and timely submits the necessary forms to be renewed on inactive status.

- vi. Incomplete applications that are timely received, but where no time remains to complete the renewal application.
- i. The Executive Director shall be authorized to approve, or to approve with conditions and/or restrictions consistent with previous Commission decisions in substantially similar cases, renewal applications that meet the qualifications for re-licensure and disclose convictions or offenses similar in nature to those outlined in this policy.
- j. The Executive Director shall refer to the Commission all license renewal applications the Executive Director believes are questionable or should be reviewed based on the licensee's qualifications for licensure or reputation for honesty, trustworthiness, integrity, and competence to transact the business of real estate.
- k. The Executive Director shall not require licensees to obtain documents and/or pleadings for criminal conduct or license discipline which has been previously considered by the Commission (or their designee).
- l. The Executive Director may delegate authority to competent and qualified staff members to approve or deny applications according to this policy.